

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTHWEST STAINLESS, LP, et al.,

Plaintiffs,

vs.

JOHN R. SAPPINGTON, et al.,

Defendants.

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Case No: 07-CV-334-CVE-FHM

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF  
THEIR MOTION FOR SUMMARY JUDGMENT**

**I. THE MATERIAL FACTS ARE NOT SUBJECT TO DISPUTE**

A review of Southwest's opposition brief reveals that none of the 19 numbered paragraphs offered by Defendants are subject to a genuine issue of material fact. Southwest's assertions are largely *non sequiturs* when compared to the core facts established in Defendants' brief. On other occasions, Southwest simply labels Defendants' sworn deposition testimony as "self-serving" without offering any record evidence to contradict the facts that Southwest dislikes. In other words, Southwest is impermissibly asking the Court to weigh the evidence and discredit certain witnesses on summary judgment. *See Nat'l Am. Ins. Co. v. Am. Re-Ins. Co.*, 358 F.3d 736, 742-43 (10th Cir. 2004).

What little new evidence Southwest offers is unavailing. Pete Kaup's declaration claims that Emmer maintained contact with "some clients," but Kaup was unable to provide even one name of a client or one time and place of a supposed contact. Bobbi Kenney makes a similar assertion that is even more vague than Kaup's. Kenney also says that Emmer was in Sappington's office with the door closed for 20 minutes in March 2007, but she says nothing about what the two discussed. Southwest then attempts to manufacture a fact issue by claiming that Sappington denied any such meetings, but the deposition passage Southwest cites involved

just two related questions: whether Sappington and Emmer had "a number of closed-door meetings" in the weeks preceding Emmer's resignation, and whether Sappington went into *Emmer's* office for closed-door meetings. (See Sappington Dep. at 147)

Kenney also asserts that Emmer did not actually retire in 2000, but her sole basis for this claim is that "he went to part time status." (See Kenney Decl. at ¶ 5) That Emmer *returned* from his brief 2000 retirement into a part-time position does not contradict the retirement that is independently established in Defendants' motion. Nor does it matter whether Southwest made some subjectively "official" notation of Emmer's retirement; the break in service is all that matters, and the personnel forms Southwest offers (having just produced them to Defendants 13 days earlier) do not contradict Emmer's testimony that he was retired, if only for a few days.

The 16 numbered paragraphs in Southwest's "Statement of Additional Facts" are recycled from Southwest's own motion for summary judgment. (Dkt. #82) The numbered paragraphs in the two briefs correspond as follows:

Numbered paragraphs from Southwest's "Statement of Additional Facts" in Dkt. #96	Corresponding paragraphs from Southwest's motion, Dkt. #82
1	2 and 3
2	4
3	5 and 6
4	12, 17, 19, 20, and 21
5	27
6	29, 30, 31, 33, and 34
7	32
8	35, 36, and 37
9	38
10	81
11	82
12	83
13	85
14	77
15	78
16	87

Defendants have already responded to these claims *seriatim* (in Dkt. #95), highlighting numerous problems with almost all of the 28 paragraphs from which Southwest cobbled together its "Additional Facts," so they will not restate the various conflicts between Southwest's claims and the record. Defendants note, however, that their earlier brief was filed just after 4:00 p.m. on March 12 (Dkt. #95), while Southwest did not file the instant opposition brief until well after 8:00 p.m. that day. (Dkt. #96) Despite having nearly five hours to review Defendants' brief discussing Southwest's misrepresentations of the record, Southwest chose to republish many of the same misrepresentations to the Court.

## II. ARGUMENT

### A. Southwest Cannot Prevail On Its Contract Claims.

#### 1. Although Florida Law Cannot Be Applied To The Contracts, It Would Not Salvage Southwest's Claims.

As before, Southwest erroneously relies on *Eakle v. Grinnell Corp.*, 272 F. Supp. 2d 1304 (E.D. Okla. 2003), in its effort to divert attention from the public policy violation that would result from the application of Florida law.<sup>1</sup> The *Eakle* court relied on an unpublished decision applying Kansas law, not Oklahoma law, with regard to the critical public policy issue. *See id.* at 1312 (citing *Mirville v. Mirville*, 10 Fed. Appx. 640 (10th Cir. 2001)). The following year, in *Oliver v. Omnicare, Inc.*, 103 P.3d 626, 628 (Okla. App. 2004), Oklahoma clarified that its public policy is synonymous with its statutes -- implicitly negating *Eakle* and *Mirville*. The *Oliver* court held that a contractual choice-of-law clause could be applied only if the foreign state's law -- as opposed to the contract itself -- "does not violate the provisions of Oklahoma law with respect to contracts in restraint of trade." *Id.* at 629. Florida law does just that.

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<sup>1</sup> Southwest's suggestion that the Court has already decided to apply Florida law is incorrect. The Court explicitly said that its statements from the bench on September 24 were merely an "overview of where I am preliminarily, so that you can then focus on disabusing me of any incorrect notions I have . . . ." (Dkt. #72 at 4)

Contrary to the narrow provisions of Okla. Stat. tit. 15, § 218, Florida purports to impose various presumptions favoring enforcement (*see* Fla. Stat. § 542.335(d)(3)) and to preclude this Court from even considering certain evidence (*see id.* at (g)(1)). The two cannot be reconciled.

Even putting aside the public policy problem, Southwest's contract claims would fail under Florida law because it requires not just any breach but a "material breach" to prevail on a contract. *See, e.g., Beck v. Lazard Freres & Co., LLC*, 175 F.3d 913, 914 (11th Cir. 1999). Yet Southwest's briefing does not address or even acknowledge this heightened burden of proof that it would have the Court apply. Defendants respectfully submit that their successful efforts to keep Sappington and Emmer from working with customers in the seven-state area (other than aerospace industry end-users, to whom Southwest does not sell) preclude a finding of any breach, much less a material one.

Moreover, the Florida noncompete statute requires that Southwest "plead and prove" two things: "one or more legitimate business interests justifying the restrictive covenant," and "that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests." Fla. Stat. § 542.335(1)(b) and (c). Southwest has not articulated what its supposed interests are, or why a one-year, seven-state restriction is reasonably necessary. Rather, it argues for the application of Florida law and then effectively asks the Court to assume all requirements have been satisfied. It is not enough for Southwest to say merely that Sappington and Emmer "made a deal" (Southwest's Brief at 18) without justifying the terms.

Had Southwest tried to prove some legitimate business interest, it would have failed nonetheless under applicable Florida precedent. *Florida Hematology & Oncology v. Tummala*, 927 So. 2d 135 (Fla. App. 2006), *review dismissed*, 969 So.2d 316 (Fla. 2007), is instructive in this regard. Tummala had signed an agreement not to compete with his former employer for two



years within a 15-mile radius. *Id.* at 137. After his employment terminated, Tummala immediately opened an office within the restricted area. *Id.* Yet he was careful not to work with any of his former employer's patients. *Id.* Despite Tummala's direct competition within the restricted geographic territory, the court found in his favor because the employer failed to prove a legitimate business interest under the statute. *Id.* at 139. Similar facts and a similar outcome are found in another case, *University of Florida v. Sanal*, 837 So. 2d 512 (Fla. App. 2006). Southwest likewise has no legitimate business interests since Sappington and Emmer have not been competing for customers within the seven states.

Rather than discussing cases like these, Southwest instead cites two Tenth Circuit cases that have nothing to do with the issues in this lawsuit. (Southwest's Brief at 18) *Norton v. City of Marietta*, 432 F.3d 1145 (10th Cir. 2005), was a Section 1983 case with "hotly contested" facts surrounding a jail cell disturbance. *Id.* at 1154. A fellow inmate supported the plaintiff's version of the story, and the police had implicated the excessive use of force by using pepper spray. *Id.* Southwest's other case, *Burlington Northern & Santa Fe Railway Co. v. Grant.*, 505 F.3d 1013 (10th Cir. 2007), involved claims that a particular substance was an "imminent and substantial endangerment" under environmental law. *Id.* at 1022. Those claims were supported by both the EPA and expert witnesses who found "elevated levels of known carcinogens." *Id.* Given Southwest's lack of evidence, the "hotly contested" facts of *Norton* and the compelling expert opinions of *Burlington Northern* stand in stark contrast to the case now before this Court.

## **2. No Authority Supports Southwest's Attempt To Subsume All The Various Agreements Into The Acquisition Agreement.**

Southwest attempts to conflate the Acquisition Agreement with the separate agreements containing the restrictive covenants here. The authorities it cites do not support this attempt, however. Both Florida law and Oklahoma law provide that related agreements can be *construed*

together, but none of the authorities cited by Southwest on this issue suggest that courts can or should meld multiple agreements into one single contract.

In addition to the lack of support for Southwest's efforts to fold the various agreements together, the language of the agreements themselves is fatal to this claim. The Noncompetition Agreements contain integration clauses that explicitly apply not just to prior agreements but also "all *contemporaneous* oral negotiations, commitments, *writings* and understandings relating to the subject matter hereof." (Noncompetition Agreements at ¶ 17 (emphases added)) And if indeed the Acquisition Agreement was one with the other agreements, Southwest would not have needed to assert causes of action under it and the others separately, as it has in Counts I and II of the Second Amended Complaint. The various agreements stand on their own, and Southwest's inability to cite any language in the Acquisition Agreement that has been violated is telling.

Further, the Acquisition Agreement designates Orange County, Florida as the exclusive venue for any disputes thereunder -- which, of course, Southwest did not abide. (Acquisition Agreement at ¶ 10.9) Conversely, both the Employment Agreements and the Noncompetition Agreements specify that suit may be brought under those contracts anywhere within the seven-state area. (Employment Agreements at ¶ 17; Noncompetition Agreements at ¶ 10) It was these latter provisions to which Southwest adhered, underscoring that this dispute is about the restrictions in the separate agreements, not the 1997 deal or the Acquisition Agreement.

**B. The Lone Fact Southwest Offers In Support Of Count III Does Not Prove A Tortious Interference With Business Claim.**

In an effort to salvage its Count III, tortious interference with business relations, Southwest first asserts that the Tenth Circuit misstated the elements of the claim in a published opinion. The particular decision, *Dill v. City of Edmond*, 155 F.3d 1193 (10th Cir. 1998), recites

four separate times that the relevant claim at issue is "tortious interference with business relations," the same claim Southwest asserts in Count III. *Id.* at 1201, 1207, 1208.

Even accepting Southwest's argument that on-point Tenth Circuit authority can be ignored, Count III still fails. The cause of action Southwest has pled requires that it establish a property right -- whether a contract or a business relation -- that was subject to interference, unlike a separate not at issue here. *See Champagne Metals v. Ken-Mac Metals, Inc.*, 458 F.3d 1073, 1094 (10th Cir. 2006) ("On appeal, Champagne argues that it did not need to separately plead interference with prospective business advantage, because this tort is 'encompassed' within the tort of interference with business relations. This is incorrect."); *Overbeck v. Quaker Life Ins. Co.*, 757 P.2d 846, 847-48 (Okla. App. 1984) (distinguishing different interference torts).

Southwest's entire argument under Count III hinges on just one fact -- as Southwest describes it, the "longstanding, 'evergreen' relationship with John Zink . . . ." (Southwest's Brief at 22) In the first instance, this "evergreen relationship" provided no guarantees that John Zink would continue purchasing from Southwest. (Sappington Dep. at 195-96) Southwest itself described the evergreen concept as an unwritten agreement "to continue business in good faith over a period of time with nothing really . . . documented, hard posted" and equated it with standardized pricing offered to a particular customer. (Southwest Dep. at 93-95) Thus, the evergreen relationship gave Southwest no property interest in ongoing revenue or orders. Despite the posted pricing, competitors like Rolled Alloys could always obtain business from John Zink "simply by going in and trying to beat the competition[']s pricing." (Sappington Dep. at 195) To this point, Rolled Alloys had an active customer relationship with John Zink before it even had a Tulsa office. (Ron Siegenthaler Decl. at ¶ 2) Southwest may believe it "controlled" its customers, as it claims elsewhere (Southwest's Brief at 18), but the facts show otherwise.

Nor can Southwest establish any interference, much less malicious or wrongful interference, with regard to John Zink. Citing a desire to get more bids, John Zink notified Southwest it was abandoning the posted pricing; nonetheless, Southwest has obtained *multiple* orders from John Zink since Sappington resigned. (Southwest Dep. at 95-96, 103, 225) Dan Sisney, who now oversees Southwest's Tulsa operations, was not aware of anything that Sappington or Emmer did to cause the changes that John Zink requested of Southwest -- and he said the posted pricing in place when Sappington resigned "was due for requoting" anyway. (*Id.* at 156-57) Further, the undisputed evidence establishes that Sappington and Emmer have had no contact with anyone at John Zink since they left Southwest. (Southwest Dep. at 184-85; Sappington Dep. at 198; Emmer Dep. at 103-04) Count III fails for all of these reasons.

**C. Southwest's Fiduciary Duty Claims Cannot Stand.**

Southwest admitted at deposition that it had no evidence of anything Emmer did as an employee that was not in its best interests. (Southwest Dep. at 153) Southwest's opposition brief makes but one assertion as to Emmer -- that he knew Rolled Alloys was opening an office in Tulsa but did not sound the alarm at Southwest. (Southwest's Brief at 23) Yet it is undisputed that Emmer did not know this was happening until another Southwest employee told him. (Emmer Dep. at 29) Before then, Emmer knew only that Siegenthaler was "thinking about contacting Rolled Alloys" to see if there were any opportunities for Siegenthaler. (*Id.* at 14)

As for Southwest's list of grievances against Sappington in support of this claim, many of these consist of managerial second-guessing on issues that were well known to Southwest President Mike Stanwood when he decided to award Sappington six-figure bonus payments that were entirely discretionary. (Stanwood Dep. at 77-78) These actions by Sappington were minor concerns at most during Sappington's employment, and they are not actionable now.



Whether Sappington told Stanwood that Rolled Alloys was opening an office in Tulsa is beside the point. (Southwest's Brief at 23) It is undisputed that Stanwood was a hands-off supervisor who gave Sappington complete authority for the Tulsa operations. (Stanwood Dep. at 32-33; Sappington Dep. at 179) Moreover, Southwest's selective citation to the *Restatement (Third) of Agency* omits the following principle: "[A]n agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship." *Id.* at § 8.04. Sappington did not talk with customers about Rolled Alloys before resigning from Southwest, did not take business information, did not encourage Southwest employees to resign, and did not do anything "otherwise wrongful." He merely discussed and accepted a new job.

Given the dearth of guidance on fiduciary duty claims under Oklahoma law, Defendants respectfully submit that the Court should decline to make new law on the scant facts that Southwest has offered here. Southwest's position would abrogate the well-established privilege employees have to quietly pursue a new job provided they, like Sappington and Emmer, refrain from committing fraudulent, unfair, or wrongful acts in the process.

**D. Southwest Offers No New Argument In Support of Count V.**

Southwest offers no new argument in support of its Count V, choosing instead to cite its own motion for summary judgment. (Dkt. #82) The reasons why that motion fails were set forth by Defendants in their March 12 opposition brief. (Dkt. #95)

**E. Even Assuming Southwest Could Prove The Existence Of Trade Secrets, It Has No Evidence Of Misappropriation.**

Even without regard to Southwest's threshold requirement of establishing the *existence* of trade secrets under the Oklahoma statutory definition, Southwest simply has no evidence of misappropriation. The passages from Southwest's own deposition testimony that Defendants cite in their motion made that clear. In its opposition, Southwest underscores its weaknesses by

offering merely a naked implication that Sappington must have used business information because certain bids were awarded to Rolled Alloys. Southwest's syllogism falls apart when the supposedly "suspicious timing" (Southwest's Brief at 25) of Rolled Alloys' successes is viewed in the context of Ron Siegenthaler's efforts to capitalize on his own longstanding customer relationships, as well as Rolled Alloys' own preexisting relationships with many of the customers at issue. (*See* Southwest's Brief at 13; Siegenthaler Decl. at ¶¶ 2-11) The trade secrets claim is without merit.

### III. CONCLUSION

Southwest filed nearly 2,000 pages of deposition transcripts with its opposition brief, yet it cites only 244 of those pages. Lacking quality evidence in the record, Southwest seeks unsuccessfully to obscure the failings of its case through sheer quantity. For the reasons set forth above and in Defendants' motion, summary judgment should be granted against Southwest and in Defendants' favor on all claims in the Second Amended Complaint.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served via CM/ECF this 26th day of March, 2008 upon the following:

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WILLIAM BENJAMIN EMMER, 9-10-07

Page 1

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SOUTHWEST STAINLESS, LP, a  
Delaware limited partnership,

Plaintiff,

vs.

JOHN R. SAPPINGTON, WILLIAM B.  
EMMER, RONALD L. SIEGENTHALER  
and ROLLED ALLOYS, INC.,  
a Michigan corporation,

Defendants.

COPY

No. 07-CV-334-CVE-PJC

*VOLUME I DEPOSITION OF WILLIAM BENJAMIN EMMER,*

produced as a witness on behalf of the Plaintiff, in  
the above styled and numbered cause, taken on the 10th  
day of September, 2007, in the City of Tulsa, County of  
Tulsa, State of Oklahoma, before me, Marlene Percefull,  
Certified Shorthand Reporter, duly certified under and  
by virtue of the laws of the State of Oklahoma.



WILLIAM BENJAMIN EMMER, 9-10-07

Page 14

1 anybody about the possibility of working with Rolled  
2 Alloys? 4:53 PM

3 A We were playing golf.

4 Q When you say "we," who was that?

5 A Ron and I. 4:53 PM

6 Q Okay.

7 A And at that time he told me that he was thinking  
8 about talking to them about seeing what might be  
9 available.

10 Q Okay. And when was that? 4:53 PM

11 A That would have been mid to late summer.

12 Q August?

13 A August, September.

14 Q Okay. 2006?

15 A Right. 4:53 PM

16 Q And did the topic come up on the golf course?

17 A Yes.

18 Q And how did Mr. Siegenthaler raise it?

19 A He just said that I'm thinking about contacting  
20 Rolled Alloys and see if there's anything there for me 4:54 PM  
21 and that's --

22 Q How did you respond?

23 A I was surprised.

24 Q Was there any talk about, hey, Bill, if I go,  
25 would you be interested? 4:54 PM

WILLIAM BENJAMIN EMMER, 9-10-07

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1 working for Rolled Alloys before you went over there? 5:10PM

2 A No.

3 Q When is the first time that you knew Rolled Alloys  
4 had opened a branch in Tulsa?

5 A Oh, gosh. I don't recall when it would have been. 5:10PM

6 Q Was it before your conversation with  
7 Mr. Siegenthaler in December?

8 A Yes.

9 Q Because you had that conversation on the golf  
10 course mid to late summer, you said August or 5:10PM  
11 September, and then your next conversation with  
12 Mr. Siegenthaler was December 2006. How did you know  
13 that Rolled Alloys had opened a branch without talking  
14 to Mr. Siegenthaler?

15 A Well, Pete Kaup had told me about that, asked me 5:11PM  
16 if I knew about it. And I said I didn't. And I asked  
17 him where he heard about it. And he said he heard  
18 about it from Mitch Silman.

19 Q When was that?

20 A I don't remember when it was. I would guess 5:11PM  
21 sometime in October.

22 Q And so Pete Kaup said that he had heard that  
23 Rolled had opened a branch?

24 A Correct.

25 Q Did you ask anybody about it? 5:11PM

WILLIAM BENJAMIN EMMER, 9-11-07

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1 IN THE UNITED STATES DISTRICT COURT FOR THE  
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3  
 4 SOUTHWEST STAINLESS, LP, a  
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 15 produced as a witness on behalf of the Plaintiff, in  
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 21  
 22  
 23  
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 25

WILLIAM BENJAMIN EMMER, 9-11-07

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1 Q And do you know if Chanute was doing business with 10:17AM  
2 Rolled Alloys prior to you coming over there?

3 A Chanute was.

4 Q How do you know that?

5 A I remember their name. 10:18AM

6 Q Do you remember seeing any business -- any records  
7 of purchases by Chanute when you went over to Rolled  
8 Alloys?

9 A Any records of purchase by Chanute?

10 Q Yes, sir. 10:18AM

11 A No. At -- from Rolled Alloys?

12 Q Yes, sir.

13 A No, I don't recall having seen any.

14 Q What about Bemberg, were they doing business with  
15 Rolled Alloys before you got there? 10:18AM

16 MR. FLAMM: Objection.

17 Answer that if you know, Bill.

18 A I'm not sure if they were or not.

19 Q Do you recall seeing any documentation that  
20 Bemberg was doing any business with Rolled Alloys after 10:18AM  
21 you had gotten there?

22 A No, I don't recall seeing any documentation to  
23 that effect.

24 Q What about John Zink, have you personally had any  
25 contact with anyone at John Zink on behalf of Rolled 10:19AM



WILLIAM BENJAMIN EMMER, 9-11-07

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1	Alloys?	10:19AM
2	A No.	
3	Q Do you know of anyone who has had any contact with	
4	John Zink on behalf of Rolled Alloys since you have	
5	been there?	10:19AM
6	A Ron Siegenthaler.	
7	Q Anyone other than Mr. Siegenthaler?	
8	A Not to my knowledge.	
9	Q What about Hughes-Anderson, have you personally	
10	had any communication with anyone at Hughes-Anderson	10:19AM
11	since you started at Rolled Alloys?	
12	A No.	
13	Q Do you know of anyone who has personally had any	
14	communication with anyone at Hughes-Anderson on behalf	
15	of Rolled Alloys since you have been there?	10:19AM
16	A Ron.	
17	Q Anyone else?	
18	A No. Let me back up. Todd, inside sales.	
19	Q Todd Lesikar?	
20	A Yes.	10:20AM
21	Q So do you know if he has been in communication	
22	with anyone on behalf of John Zink?	
23	A I don't know.	
24	Q How about Hughes-Anderson?	
25	A Yeah. Hughes-Anderson, he has.	10:20AM

JEFF LEGRAND, 9-13-07

Page 1

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4 SOUTHWEST STAINLESS, LP, a  
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COPY

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14 *THE 30(b)(6) DEPOSITION OF JEFF LEGRAND,*  
15 produced as a witness on behalf of the Defendants, in  
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18 Tulsa, State of Oklahoma, before me, Marlene Percefull,  
19 Certified Shorthand Reporter, duly certified under and  
20 by virtue of the laws of the State of Oklahoma.  
21  
22  
23  
24  
25

JEFF LEGRAND, 9-13-07

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1 pricing with John Zink in the Metals division.

2:01PM

2 Q Is there anything else to your answer?

3 A No.

4 Q Who are these 12 to 15 customers we're talking  
5 about?

2:01PM

6 MR. GROB: Please answer based on my  
7 instruction.

8 A Dow Chemical, BP, Bear, Valero, Total Petro  
9 Chemical. I'm trying to think who else. Those are the  
10 top ones off the top of my head.

2:02PM

11 Q Now, you said in the Metals division -- strike  
12 that. You said those were all outside of the Metals  
13 division?

14 A Correct.

15 Q Are there any within the Metals division with  
16 which Southwest has pricing agreements?

2:02PM

17 A Like I said, we had posted pricing with John Zink.

18 Q What do you mean by that?

19 A We no longer have posted pricing with John Zink.

20 Q What do you mean by posted pricing?

2:02PM

21 A Mr. Sappington would negotiate, I'm not sure  
22 exactly how the transaction took place, but we would  
23 post prices with John Zink for a period of time, 30  
24 days, 60 day, 90 days, whatever that period of time  
25 was, and they would place orders at those posted

2:02PM

JEFF LEGRAND, 9-13-07

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1 prices.

2:02PM

2 Q why is it that Southwest no longer has posted  
3 prices?

4 A Because shortly after Mr. Sappington and Mr. Emmer  
5 left, we were informed by John Zink that they would be  
6 no longer placing orders off the posted pricing.

2:02PM

7 Q who at John Zink informed you of that?

8 A I personally wasn't informed of that. I was  
9 informed of that by Mr. Sisney. I do not remember the  
10 name of who else told everyone.

2:03PM

11 Q There was some testimony earlier in the week when  
12 you were in the room regarding evergreen agreements, do  
13 you recall that?

14 A Mm-hmm.

15 Q What does the term "evergreen agreement" mean?

2:03PM

16 MR. GROB: Mr. Legrand, please make sure  
17 that you answer with a verbal response.

18 A It's an agreement that you have with a customer  
19 that you're going to continue business in good faith  
20 over a period of time with nothing really, you know,  
21 documented, hard posted.

2:03PM

22 Q So it's an unwritten agreement, is that correct?

23 A Yes.

24 Q With whom does Southwest have evergreen agreements  
25 with?

2:03PM



JEFF LEGRAND, 9-13-07

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1 A Again, it's many. Many customers in all the 2:03PM  
2 divisions that we have businesses.

3 Q Well, let's talk about what you've referred to as  
4 the Metals division regarding the evergreen agreement  
5 customers for the Metals division. 2:03PM

6 A The only ones I was aware of was Koch and John  
7 Zink.

8 Q And those are still in place today as far as  
9 Southwest is concerned?

10 A I'm not that familiar with Koch, but I know that 2:04PM  
11 John Zink is not.

12 Q And when did the evergreen agreement between  
13 Southwest and John Zink cease to exist?

14 A The posted pricing, whether you call that an  
15 evergreen agreement or not, which I consider it an 2:04PM  
16 evergreen agreement, ended with Mr. Sappington and  
17 Mr. Emmer leaving Metals.

18 Q And that was at the request of the customer,  
19 correct?

20 A Whether it was at the request of the customer or 2:04PM  
21 not, we know our business patterns changed with the  
22 customer when they said they would no longer be buying  
23 off the posted pricing.

24 Q So the customer communicated to Southwest that it  
25 was no longer purchasing under this evergreen 2:04PM

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1 agreement, correct?

2:04PM

2 A Correct.

3 Q What about Koch? Is that evergreen agreement  
4 still in place?

5 A I'm not aware if it is or not.

2:05PM

6 Q Southwest is not aware?

7 A Not aware.

8 Q What about the marketing trade secrets of  
9 Southwest, what are those?

10 A How we go to market, sometimes we go to market as  
11 a division on it's own, sometimes we go to market as a  
12 complete entity under the IPVF banner.

2:05PM

13 Q Anything else?

14 A (Shakes head from side to side.)

15 Q Who at Southwest is privy to that marketing  
16 information you consider trade secret?

2:05PM

17 A It would be myself, and depending on the customer  
18 that we approach, that salesperson, that manager. Each  
19 market is different, each business is different how  
20 they want to approach a particular customer.

2:05PM

21 Q So that would be some of the 100-plus salespeople  
22 with no noncompetes?

23 A Correct.

24 Q Anyone else have access to that marketing  
25 information?

2:06PM

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1 A I'm not aware if they have or not. I'm sure there 2:14PM  
2 has been some discussions.

3 Q Who at Southwest has talked to anyone at John Zink  
4 about the posted pricing issue?

5 A Dan Sisney may have, Les Lane may have. Les Lane 2:14PM  
6 is an outside salesman.

7 Q And what did John Zink tell Southwest about the  
8 posted pricing issue?

9 A They felt because of -- my understanding is they  
10 felt because of the current market they needed to go 2:14PM  
11 out for more bids.

12 Q So your understanding -- strike that. Southwest's  
13 understanding is that Zink stated it wanted to get more  
14 bids?

15 A Correct. 2:15PM

16 Q And that's why it stopped using the posted  
17 pricing?

18 A Correct. That's what we were told by Zink.

19 Q Who at Zink told you that?

20 A Like I said, I'm not familiar with the people 2:15PM  
21 there. I'm more -- when they told us, I did not ask  
22 them for names. I do not have direct contact with the  
23 customers at Metals.

24 Q But someone at Southwest did.

25 A Dan Sisney or Les Lane, yes. 2:15PM

TULSA FREELANCE REPORTERS  
918-587-2878

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1 telling Mr. Murphy what should be going on in the shop. 3:26PM

2 Q Any other actions that Southwest claims

3 Mr. Sappington took before leaving Southwest that were  
4 not in Southwest's best interest?

5 A No. 3:26PM

6 Q What does Southwest claim Mr. Emmer did before  
7 leaving Southwest that were not in Southwest's best  
8 interests?

9 A Mr. Emmer's role at the time was consultant, and  
10 I'm not sure how much time was spent in the office, so 3:26PM  
11 I couldn't -- I couldn't answer that.

12 Q So Southwest doesn't know anything that Mr. Emmer  
13 did that was not in the best interest?

14 A Prior to leaving?

15 Q Prior to leaving. 3:26PM

16 A No.

17 Q Does Southwest believe that any of  
18 Mr. Sappington's activities as alleged in this case  
19 have been criminal?

20 A Well, that's a pretty broad term. I believe 3:27PM  
21 Mr. Sappington was not doing his fiduciary duty to  
22 protect this company. Whether that constitutes  
23 criminal or not, I'm not sure. I'm not a lawyer.

24 Q Has anyone at Southwest ever said to anyone else  
25 that Mr. Sappington did anything that rose to the level 3:27PM



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1 Q Do you know if Southwest sent any demand letters 3:30PM  
2 to Mr. Sappington about his employment?

3 A No.

4 Q Do you know if Southwest sent Mr. Sappington any  
5 letters at all regarding his employment with Rolled 3:30PM  
6 Alloys?

7 A Other than the legal documents in this case, no.

8 Q Did Southwest know how Mr. Emmer was contacted  
9 about his employment with Rolled Alloys?

10 A Not that I'm aware of, no. 3:30PM

11 Q Did Southwest ever know?

12 A No.

13 Q Take a look, please, at what has been marked  
14 Exhibit 6, and tell me when you've had a chance to  
15 review that. 3:31PM

16 A Okay.

17 Q What is it?

18 A It's a declaration of Mr. Sappington.

19 Q Is that one of the documents that you reviewed in  
20 preparation to testify today? 3:31PM

21 A Yes.

22 Q I'd like you to go through that document line by  
23 line and tell me anything that Southwest believes is  
24 not entirely accurate.

25 MR. GROB: Object to form. 3:31PM

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1 A Well, you know, I can't attest to what

3:33PM

2 Mr. Sappington is doing for Rolled Alloys.

3 Q In other words, Southwest can't say anything about  
4 what he is doing for Rolled Alloys, right?

5 A Correct. I mean, you know, aerospace alloys is a  
6 pretty broad term.

3:33PM

7 Q Okay. We can come back to that. What else in  
8 here do you think on behalf of Southwest might not be  
9 entirely accurate?

10 A I believe Mr. Sappington's position is more than  
11 outside sales.

3:33PM

12 Q Okay. What else?

13 A Number 6, I don't believe that. I don't believe  
14 he had a problem with that.

15 Q Can you say that again?

3:34PM

16 A Number 6, I believe he solicited employees of  
17 Metals.

18 Q And that's just the one employee you mentioned,  
19 correct?

20 A Yes.

3:34PM

21 Q Ms. Lewis?

22 A Well, we also know Mr. Brown was contacted, but we  
23 think that was Mr. Lesikar but they all worked out of  
24 the same office.

25 Q You don't know that Mr. Brown was contacted by

3:34PM

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1 working for Rolled Alloys so they have a comfort level  
2 that they would be taken care of in the way they've  
3 been taken care of in the past.

4:16PM

4 Q Who at John Zink has Mr. Sappington contacted  
5 since he left Southwest?

4:16PM

6 A I can't give you a specific name.

7 Q Southwest doesn't know if he's had contact with  
8 anyone at John Zink, correct?

9 A He does not need to contact anyone directly. He  
10 is there.

4:16PM

11 Q Southwest doesn't know anyone at John Zink that  
12 John Sappington has contacted since he left Southwest,  
13 correct?

14 MR. GROB: Object to form.

15 A I don't know if Mr. Sappington has talked to  
16 anyone directly or not but, once again, he doesn't have  
17 to.

4:16PM

18 Q Southwest doesn't know of anyone at John Zink that  
19 Mr. Sappington has contacted since he left Southwest,  
20 yes or no?

4:16PM

21 MR. GROB: Object to the form.

22 A No. I don't know if he's contacted anyone.

23 Q What about Mr. Emmer at John Zink?

24 A Once again, relationships that he's built up over  
25 the years are intact.

4:17PM

JEFF LEGRAND, 9-13-07

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1 Q And I understand your point about the 4:17PM  
2 relationships. What I'm asking you is not about  
3 relationships, what I'm asking you about is contacts  
4 and I want to know who at John Zink Mr. Emmer has  
5 contacted since he left Southwest? 4:17PM

6 A The answer is the same for Mr. Sappington at this  
7 time. I'm not sure if -- we are not sure if he's  
8 contacted anyone.

9 Q So Southwest doesn't have any knowledge of having  
10 any contacts by Mr. Emmer? 4:17PM

11 A At this time.

12 Q Who at Hughes-Anderson has John Sappington  
13 contacted since he left Southwest?

14 A He plays golf with a gentleman every Wednesday  
15 night. 4:17PM

16 Q Who is that?

17 A Once again, you asked this question a few minutes  
18 ago. I'm not sure of the gentleman's name.

19 Q And what business has been discussed between the  
20 two of them? 4:17PM

21 A I wasn't in the golf cart.

22 Q What business does Southwest know that has been  
23 discussed between Mr. Sappington and the gentleman from  
24 Hughes-Anderson?

25 A Mr. Sappington could have, you know, not played in 4:17PM

JEFF LEGRAND, 9-13-07

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1 Q How do you know that?

5:01PM

2 A It's our belief.

3 Q What facts does Southwest have to support those  
4 beliefs?

5 A Our beliefs are, the facts are, Rolled Alloys came  
6 in to this marketplace and hired the people that had  
7 the most experience in the marketplace. These  
8 gentlemen have noncompete agreements and employment  
9 agreements that forbid them from doing that with the  
10 sale of the company, the goodwill they provided the  
11 company in the acquisition.

5:02PM

12 Q Has Southwest obtained any orders from John Zink  
13 since Mr. Sappington left?

5:02PM

14 A Yes.

15 Q How many?

5:02PM

16 A I couldn't tell you how many.

17 Q More than one?

18 A Yes.

19 Q More than five?

20 A Possibly.

5:02PM

21 Q How much money do those orders reflect in terms of  
22 revenue?

23 A I believe I just answered that question a while  
24 ago that I didn't know how much business we have done  
25 with John this year.

5:02PM



JOHN R. SAPPINGTON, 9-10-07

Page 1

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SOUTHWEST STAINLESS, LP, a  
Delaware limited partnership,

Plaintiff,

vs.

JOHN R. SAPPINGTON, WILLIAM B.  
EMMER, RONALD L. SIEGENTHALER  
and ROLLED ALLOYS, INC.,  
a Michigan corporation,

Defendants.

**COPY**

No. 07-CV-334-CVE-PJC

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*THE DEPOSITION OF JOHN RUSSELL SAPPINGTON,*  
produced as a witness on behalf of the Plaintiff, in  
the above styled and numbered cause, taken on the 10th  
day of September, 2007, in the City of Tulsa, County of  
Tulsa, State of Oklahoma, before me, Marlene Percefull,  
Certified Shorthand Reporter, duly certified under and  
by virtue of the laws of the State of Oklahoma.

JOHN R. SAPPINGTON, 9-10-07

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1 years and no one ever told you that they were going 12:16PM  
2 over there before someone told you, "Hey, I saw them at  
3 the airport"?

4 MR. FLAMM: Objection.

5 A Nobody told me. 12:17PM

6 Q Mr. Sappington, did you not have a number of  
7 closed-door meetings with Mr. Emmer in the weeks  
8 leading up to his leaving?

9 A No.

10 Q You never went into in Mr. Emmer's office behind 12:17PM  
11 closed doors and had a conversation with him for a half  
12 hour or 45 minutes?

13 A No, absolutely not.

14 Q When Lesikar left, what was his position?

15 A Sales, inside sales. 12:17PM

16 Q And you said he left in January 2007, correct?

17 A I think that was the time frame, yes.

18 Q Who did you replace him with?

19 A Well, to be honest with you, I don't know if we  
20 replaced him with a gentleman from our shop, Owen 12:17PM  
21 Thornton.

22 Q What do you mean when you say a gentleman from  
23 your shop?

24 A There was a gentleman that had worked in our shop  
25 for a period -- for a long period of time that we felt 12:17PM

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1 Q Well, I don't think we asked that question. But 2:00PM  
2 is that your answer, you didn't feel an obligation to  
3 talk to Mr. Stanwood about it?

4 MR. FLAMM: Same objection.

5 A It was not necessarily that I didn't have -- I 2:00PM  
6 feel I had an obligation. I felt like we acted pretty  
7 much independently. He liked it and I liked it. He  
8 let me did my thing so I felt like I can handle it on a  
9 local basis without having to report anything to him.  
10 He was not a micromanager. 2:01PM

11 Q Mr. Sappington, you just testified that you knew  
12 that Mr. Stanwood was taking a more active role in the  
13 management of your branches, which was one of reason  
14 you were more unhappy toward the latter part of that  
15 year 2006. So that doesn't just jive with what he said 2:01PM  
16 about, well, I can do what I want because I was running  
17 my own branch?

18 MR. FLAMM: Objection. Your  
19 characterization of his testimony.

20 Q If you speak louder, it's not going to make any 2:01PM  
21 difference.

22 MR. FLAMM: I'm making my objection.

23 Q You can answer.

24 A Mr. Stanwood was dictating what we would do in our  
25 branch. There was no discussion about it. This is the 2:01PM

JOHN R. SAPPINGTON, 9-10-07

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1 A I'm not aware of any. 2:19PM

2 Q Do you know whether Rolled Alloys had the same  
3 pricing structure? And I don't mean by saying prices  
4 but the same deal with John Zink where they publish  
5 prices for a period of time and they could buy off that 2:19PM  
6 published list.

7 A I don't believe any other distributor including  
8 Rolled Alloys would have had any published pricing  
9 because Metals was in there, had basically an  
10 Evergreen, no contract but an Evergreen agreement with 2:20PM  
11 link to supply them material.

12 And as Mr. Dawkins often said, serve  
13 was a big part of that. We were local, they were  
14 local, so it was very difficult for another industry  
15 to come in. So if you're on the outside looking in 2:20PM  
16 as Rolled was, you got in there simply by going in  
17 and trying to beat the competitions pricing.

18 Q And you were the competition at Metals, correct?

19 A Metals has always been the competition.

20 Q And when it comes to John Zink, you were 2:20PM  
21 definitely the guys to beat, is that right?

22 A Absolutely.

23 Q And you said an Evergreen agreement, can you tell  
24 me what you mean by that?

25 A Well, there was nothing stating that there was a 2:20PM

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1 hard and fast contact. There was an agreement by John  
2 zink and by their current company, Koch, to buy from --  
3 Koch had an agreement with STP solely. John Zink had  
4 an agreement with Metals and STP to buy products from  
5 them. Didn't guarantee anything, it just -- we will  
6 all continue to buy product from you as long as you  
7 continue to service, as long as you continue to keep us  
8 competitive, all those good things. If you ever cease  
9 to do that, then you're out.

2:20PM

2:21PM

10 Q How long did you have that Evergreen agreement?  
11 whether you say Koch, is that K-O-C-H?

2:21PM

12 A K-O-C-H.

13 Q Okay. How long did you have that, what you have  
14 referred to as Evergreen agreement with Koch?

15 A I'm going to say that an agreement was started in  
16 the early '90s, 1991, '92, I'm not sure.

2:21PM

17 Q So you had that -- that agreement in place during  
18 the acquisition, correct?

19 A Yes.

20 Q And was Koch one of those entities that was  
21 anticipated to transfer their business subsequent to  
22 the acquisition? Let me put it in a different way. To  
23 continue doing business with whatever the Metals Group  
24 was after the acquisition, was it anticipated --

2:21PM

25 A Yes.

2:22PM



JOHN R. SAPPINGTON, 9-10-07

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1 general discussion in the office.

2:23PM

2 Q what did you hear?

3 A That we have taken some orders from John Zink.

4 Q Do you know if Rolled Alloys has any published  
5 pricing for John Zink while you were working for them  
6 now?

2:23PM

7 A I can't say because, again, I don't get involved  
8 in the pricing or the handling of John Zink, so I don't  
9 know if we have published pricing or not.

10 Q But you were pretty sure --

2:23PM

11 A I don't think so.

12 Q Okay. You were pretty sure that Metals was the  
13 only one that published pricing with them at least for  
14 the Tulsa business but before you went over there,  
15 correct?

2:23PM

16 A Correct.

17 Q But you don't know now whether Rolled Alloys has  
18 any published pricing with them, do you?

19 A I don't believe there is, but, again, I can't say  
20 100 percent that there is not.

2:24PM

21 Q And after you arrived at Rolled Alloys, did you  
22 have -- did you come to find out whether Rolled Alloys  
23 had done any business with John Zink while you were  
24 working for Metals?

25 A Yes.

2:24PM

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTHWEST STAINLESS, LP, )  
PLAINTIFF, )

VS. )

CASE NO: 07-CV-334-CVE-FHM

JOHN R. SAPPINGTON, )  
WILLIAM B. EMMER, AND )  
ROLLED ALLOYS, INC., )  
DEFENDANTS. )

\*\*\*\*\*

DEPOSITION OF MIKE STANWOOD

November 15, 2007

\*\*\*\*\*

DEPOSITION OF MIKE STANWOOD, produced at the instance of Defendants and duly sworn, was taken in the above-styled and numbered cause on the 15th day of November, 2007, from 8:25 a.m. until 12:14 p.m., before Judy S. Hodges, CSR, RPR, in and for the State of Texas, reported by stenograph machine, at the offices of Southwest Stainless, L.P., 8505 Monroe Road, Houston, Harris County, Texas.

COPY

JOB NUMBER: \_\_\_\_\_

1 Q Do you know if it was more than two years ago?

2 A I would assume it was more than two years  
3 ago. Again, I don't know.

4 Q How often were you in contact with  
5 Mr. Sappington when he was reporting to you?

6 A It would vary, always at the end of the month  
7 because we were getting numbers in. We would have  
8 meetings where I would call John and, you know, help  
9 set up a meeting. Or if John needed something, needed  
10 something like new equipment, we'd talk about getting  
11 into different products. Basically that's it. We  
12 would discuss how to expand our markets.

13 Q What kind of contact did you have, in person,  
14 telephone, e-mail?

15 A Both, both.

16 Q How often did you talk to him on the  
17 telephone?

18 A Probably once or twice a month, you know, some  
19 months more than others.

20 Q Did you communicate with him by e-mail?

21 A Very seldom, if any.

22 Q Did he come down to Houston?

23 A Uh-huh.

24 Q How often?

25 A Probably once a quarter.

1 Q Did you go up to Tulsa?

2 A Very seldom.

3 Q How often?

4 A Tulsa, probably four times in the years. I  
5 didn't need to because John ran the location there.

6 Q Four times total or four times each year?

7 A No, four times total.

8 Q What was Mr. Sappington's authority to run the  
9 Tulsa operations?

10 A Complete authority, hiring, firing, buying,  
11 the markets, strategic moves. It was his to run.

12 Q Did you have any expectations for him to come  
13 to you to get approval to do particular things?

14 A Certain things we would -- as all the managers  
15 of our division, we would discuss when we were getting  
16 into different materials, different alloys, hiring  
17 someone to, you know, represent us, just normal things  
18 you'd do to run a business and as I do when I have to  
19 report to my supervisor.

20 Q Who is your supervisor?

21 A Mr. Joe DeAngelo.

22 Q Is he an employee of HD Supply?

23 A Yes.

24 Q What's his position?

25 A President, CEO.

1 that may be where he was going. I heard about it. I  
2 think that's what I said earlier.

3 Q Was there anything with regard to  
4 Mr. Sappington not meeting your expectations that came  
5 to your attention after you decided to award him a  
6 300,000-dollar-plus bonus in 2007?

7 A After the bonus was awarded you said?

8 Q After you had decided that he would get --

9 A After he got it or after I decided? Because I  
10 would have to stick amounts in before. After he got  
11 the bonus, there was obviously the Todd situation. If  
12 he did know where he was going or not, I don't know.

13 Q So you believe that Mr. Lesikar left after  
14 you'd already decided what amount Mr. Sappington would  
15 get?

16 A You know, I don't know the date Mr. Lesikar  
17 left. My point with John, I decided on an amount that  
18 John was to get; and quite honestly, John knew all  
19 along. It was no secret where the bonuses were  
20 heading. John had copies of his P&L every month and  
21 had known the history of the bonus pool.

22 Q What I really want to get to is, what came to  
23 your attention about Mr. Sappington not meeting your  
24 expectations after you decided that he would get a  
25 300,000-dollar-plus bonus in 2007?



1           A     Well, Mr. Sappington left shortly after the  
2     check was cashed. So where he has ended up as an  
3     employee and where Todd has ended up, obviously I'm a  
4     little disappointed that -- you know, that possibly  
5     this was known all along.

6           Q     What was known all along?

7           A     That Rolled Alloys was coming to town and that  
8     during this period of time while cashing retention  
9     checks that possibly this was known.

10          Q     Why do you say possibly?

11          A     I -- you know, you asked me what I felt; and  
12     this is how I felt.

13          Q     All the other stuff, though, Canada, Mobile,  
14     Siegenthaler in the office, purchasing from overseas,  
15     if John hadn't met your expectations on those, you  
16     already knew it at the time you decided to give him a  
17     big bonus in 2007, correct?

18          A     Yes, sir.

19          Q     Did you work with Mr. Emmer?

20          A     Mr. Emmer was part of the company that Hughes  
21     Supply bought and had a few times got to, you know,  
22     talk and do a little bit of work with Mr. Emmer, very  
23     little over the years.

24          Q     How many times a year would you be in contact  
25     with Mr. Emmer?

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTHWEST STAINLESS, LP, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	Case No: 07-CV-334-CVE-FHM
JOHN R. SAPPINGTON, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF RON SIEGENTHALER**

Ron Siegenthaler truthfully states he is competent to testify if called, and he further truthfully states of his own personal knowledge as follows:

1. I started working in the metals industry in the mid-1960s. As a result of my work in the industry and my efforts to stay in touch with my network of professional contacts, I have developed and maintained relationships with many people and businesses who have a need for the types of materials provided by metals suppliers such as Metals, Inc. and Rolled Alloys.

Some history of my relationships with a few particular customers is set forth below.

2. **John Zink:** I have known Robert Dawkins, Director of Materials for John Zink, since the late 1970s. I visited Mr. Dawkins shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from John Zink (which was already doing business with Rolled Alloys in 2006 before the Tulsa office even opened). Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about John Zink.

3. **Hughes-Anderson:** I have called on Hughes-Anderson since the late 1960s for various different suppliers. I have known Monte Stewart, Hughes-Anderson's President, since

the 1980s. I have also known Rich Gustafson, who handles purchasing for Hughes-Anderson, for years. I visited Mr. Gustafson shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Hughes-Anderson (which was already doing business with Rolled Alloys in 2006 before the Tulsa office even opened). Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Hughes-Anderson.

4. **Wagner Plate Works:** I have known Phil Lacy at Wagner Plate Works since the two of us worked together at Patterson Steel in the mid-1960s. I visited Mr. Lacy shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Wagner Plate Works (which was already doing business with Rolled Alloys in 2006 before the Tulsa office even opened). Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Wagner Plate Works.

5. **Braden Manufacturing:** I have called on Braden Manufacturing since the mid-1970s. I visited Jerry Sutor at Braden Manufacturing shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Braden. Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Braden Manufacturing.

6. **Linde:** I have known Wayne Inhofe at Linde for several years. I visited Mr. Inhofe shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Linde. Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Linde.

7. **Cust-o-Fab:** I have known Barry Keeler, a co-owner of Cust-o-Fab, since the 1970s. I visited Barry's son Eric Keeler, who is a purchasing agent for Cust-o-Fab, shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Cust-o-Fab (which was already doing business with Rolled Alloys in 2006 before the Tulsa office even opened). Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Cust-o-Fab.

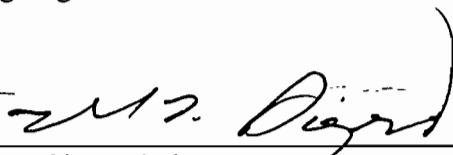
8. **Energy Exchangers:** I have known Jim Elder at Energy Exchangers since the 1980s. I visited Mr. Elder shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Energy Exchangers. Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Energy Exchangers.

9. **Hanlock:** I have known Mike Hanson at Hanlock since the two of us worked together at Patterson Steel in the mid-1960s. I visited Mr. Hanson shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Hanlock (which was already doing business with Rolled Alloys in 2006 before the Tulsa office even opened). Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Hanlock.

10. **Inserv:** I have known Jerry Schivally at Inserv since he was a young man; I had a business relationship with his father for decades, and Jerry Schivally sometimes worked with his father. I visited Jerry Schivally at Inserv shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Inserv. Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Inserv.

11. **Flowell:** I have known Stan Bridgeford at Flowell for approximately 15 years. I visited Mr. Bridgeford shortly after I started making sales calls for Rolled Alloys in 2007, and soon thereafter Rolled Alloys' Tulsa office obtained business from Flowell. Neither John Sappington nor Bill Emmer worked with me in this process or provided me with any information about Flowell.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 25, 2008.

  
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Ron Siegenthaler